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In re Application of:
BELSER, Roland, et al. :
U.S. Application No.: 10/578,814 : DECISION ON PETITION
PCT No.: PCT/EP2004/011988 :
International Filing Date: 22 October 2004 :
Priority Date: 04 November 2003 :
Attorney Docket No.: 19715 :
For: AXIAL PISTON MACHINE :

This decision is issued in response to the "Response To Notification Of Abandonment" filed 22 January 2008 and the "Supplemental Response To Notification Of Abandonment Together With Petition Under 37 CFR 1.182" filed 26 March 2008. Deposit Account No. 19-1013 will be charged the \$400 petition fee required for the petition under 37 CFR 1.182.

BACKGROUND

On 22 October 2004, applicant filed international application PCT/EP2004/011988. The international application claimed a priority date of 04 November 2003, and it designated the United States. On 26 May 2005, the International Bureau (IB) communicated a copy of the international application to the United States patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 04 May 2006.

On 04 May 2006, applicant filed a Transmittal Letter requesting entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 13 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 was required.

On 05 April 2007, applicants filed a response to the Notification Of Missing Requirements that included a cover letter entitled "Submission Of Declaration And Power Of Attorney," a copy of the Notification of Missing Requirements, and an executed declaration. However, the cover letter misidentified the application number to which the submission was directed as 10/578,414. Accordingly these materials were placed in U.S. application file 10/578,414.

On 18 December 2007, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification Of Missing Requirements.

On 22 January 2008, applicant filed the "Response To Notification Of Abandonment" considered herein. The response asserts that applicant filed a timely and proper response to the Notification Of Missing Requirements, including an executed declaration, on 05 April 2007, and that the holding of abandonment should therefore be withdrawn. The submission included a copy of the materials filed 05 April 2007 and a return postcard that itemizes these materials and bears a USPTO receipt stamp dated 05 April 2007.

On 10 April 2007, applicant filed the "Supplemental Response To Notification Of Abandonment Together With Petition Under 37 CFR 1.182" considered herein. The petition requests that the typographical error in the cover letter included with the 05 April 2007 submission be corrected so that such materials may be treated as having been filed in the present application on such date as a timely response to the Notification Of Missing Requirements.

DISCUSSION

The petition under 37 CFR 1.182 requests that the materials filed on 05 April 2007 (misdirected to application number 10/578,414) be treated as having been filed in the present application, 10/578,814, on 05 April 2007 as a timely response to the Notification Of Missing Requirements mailed 13 March 2007. Granting of this petition is required in order to avoid abandonment of the present application.

The required petition fee accompanied the petition, and a review of the documents filed 05 April 2007 confirms that the proper application number was listed thereon (specifically, on the copy of the Notification Of Missing Requirements included with such submission).

Applicant's present submission satisfies the requirements for a grantable petition under 37 CFR 1.182. Accordingly, the response to the Notification Of Missing Requirements, including the executed declaration, will be treated as having been filed in the present application, 10/578,814, on 05 April 2007 as a timely response to the Notification of Missing Requirements mailed 13 March 2007.

A review of the declaration confirms that the declaration complies with the requirements of 37 CFR 1.497.

The Notification of Abandonment mailed 18 December 2007, based as it was on applicant's purported failure to file a timely response to the Notification Of Missing Requirements, is appropriately vacated.

CONCLUSION

The petition under 37 CFR 1.182 is **GRANTED**.

The response to the Notification Of Missing Requirements filed 05 April 2007, including the executed declaration, will be treated as having been filed in the present application on 05 April 2007.

The declaration satisfies the requirements of 37 CFR 1.497.

The Notification of Abandonment (Form PCT/DO/EO/903) mailed 18 December 2007 is hereby **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the PCT Operations Division for further processing in accord with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 05 April 2007.

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